

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|                            |   |                |
|----------------------------|---|----------------|
| WILLIAM BARTOLOMEI, et al. | : | CIVIL ACTION   |
|                            | : |                |
| v.                         | : |                |
|                            | : | NO. 03-cv-4620 |
| HILTI INCORPORATION        | : |                |

**MEMORANDUM AND ORDER**

**Baylson, J.**

**February 8, 2005**

After a jury trial, resulting in answers to Jury Interrogatories in favor of Defendant, the Court entered judgment in favor of Defendant and against Plaintiffs. Under F.R. Civ. P. 59, Plaintiffs have now moved for a new trial. Plaintiffs do not cite any legal error and could not because the Court made no substantive rulings against Plaintiffs and there were no exceptions to the charge or Jury Interrogatories. However, Plaintiffs move for a new trial because the verdict was against the weight of the evidence and because the jury's verdict ignores the evidence and the law.

Both parties cite the leading case of Williamson v. Consolidated Rail Corp., 926 F.2d 1344 (3d Cir. 1991) where the court held that a district court should only grant a new trial on the basis that the verdict was against the weight of the evidence wherein a miscarriage of justice would result if the verdict were to stand, and in that case, reversed the district court's grant of a new trial.

In this case, although Plaintiff, William Bartolomei, by his own testimony and various other witnesses, established a prima facie case sufficient to withstand a directed verdict, the

Defendant's counsel vigorously cross examined the Plaintiff and other witnesses, and established several threshold issues of fact, such as whether the tool was safe as used by Plaintiff, Plaintiff's own experience in using tools, a prior injury which the Plaintiff had suffered, whether the Plaintiff had read the instructions for the tool which he was using and alleged was defective, and similar matters. The issue was thus one of credibility and causation. The jury found Plaintiff did not satisfy his burden of proof, which finding was within the jury's province. The case was tried well on both sides, and the issues were clearly presented to the jury by the closing arguments of both lawyers and by the Court's charge.

The Court has reviewed the post-trial briefs and cannot say that there was a miscarriage of justice, and therefore, Plaintiffs' Motion for New Trial (Docket No. 69) is ORDERED DENIED.

BY THE COURT:

s/Michael M. Baylson  
Michael M. Baylson, U.S.D.J.

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